

STATE OF NEW HAMPSHIRE  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

PORTSMOUTH MUNICIPAL EMPLOYEES, LOCAL 1386, AFSCME	:	
	:	CASE NO. A-0411:1
v.	:	
	:	DECISION NO. 79026
CITY OF PORTSMOUTH	:	
	:	

APPEARANCES

Representing the Public Employees, AFSCME, Local 1386:

Ralph Kinch, President  
William McDonough, Executive Director, AFSCME  
Robert Dallaire, Member of Local 1386  
James Linchey, Member of Local 1386

Representing the Public Employer, City of Portsmouth:

Charles Eldredge, Jr., Esquire  
Calvin Canney, City Manager  
David Atwell  
Rance Collins

BACKGROUND

This case arises out of charges filed on December 18, 1978 by the president of Local 1386, AFSCME, Ralph W. Kinch, alleging a violation of RSA 273-A:5 (h) against the City of Portsmouth, specifically, "the City of Portsmouth and its manager for failing to comply with certain recommendations of the Personnel Advisory Board and Section VIII-B of the Working Agreement between the City of Portsmouth and the Portsmouth Municipal Employees in the settlement of a grievance filed on July 27, 1978 by members of Local 1386 employed at the Sherburne Pumping Station by the City of Portsmouth." The relief sought in the petition was that the City Manager comply with the Personnel Advisory Board's recommendation and Section VIII-B of the Agreement which reads as follows:

"Protective equipment shall be furnished to all employees performing work which requires the use of such protective equipment."

Hearing on this case was held at the Board's offices in Concord on February 22, 1979. At the outset of the hearing the parties mutually stipulated to the following:

- a. Matter was properly grieved through procedures outlined in existing agreement.
- b. Situation is not racial, sexual, etc.
- c. Management's prerogative in providing certain protective equipment for Water Department personnel.
- d. The matter of protective equipment is the subject of negotiations and is not negotiated in this contract.

Testimony of the petitioner, a Water Department employee, contended that they were or should be entitled to the same protective equipment as the Sewer Department employees because on occasion they worked in the same area or trench. They also stated that the number of uniforms provided personnel in the Sewer and the Water Department differed. The City argued that the subject of uniforms was negotiable and at the negotiating table the Union lost its bid to get certain uniforms for the Water Department employees. It was further testified that all safety and protective equipment required was available to Water Department employees such as rubber gloves, safety goggles, rubber boots, safety harness and rope when requested.

The president of the Union agreed that the subject of protective equipment was never negotiated to a conclusion.

All evidence before the Board indicated that protective equipment was either furnished the individual or made available when necessary.

Evidence of a grievance being filed by members of Local 1386 regarding the issuance of protective clothing to certain Sewer Department employees and not to members of the Water Department was presented in detail. The grievance was handled as prescribed in Section IX of the contract and the remedy sought in the grievance was denied. The Union then took the matter to the City Personnel Advisory Board, a procedure set forth in the City Charter. The Personnel Advisory Board made certain recommendations, however, such recommendations are not binding on either party.

Evidence was heard regarding all the potential hazards of working in the Sewer Department and Water Department Operations, the coliform count in certain areas and the possibility of employees carrying infections home to families after a day's work etc. The difference in the number of uniforms supplied to men in the Water Department and the Sewer Department did not provide equal treatment to employees. After hearing all the evidence, the following findings were made by the Board:

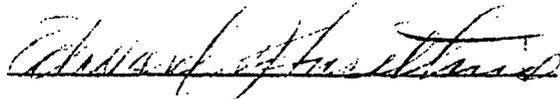
#### FINDINGS

1. The grievance procedure provided in the contract Section IX was followed by both parties. This Board in this case will not tamper with decisions made when contract language compliance is indicated.
2. The subject of the number of uniforms provided employees of the Water Department and the Sewer Department had been the subject of negotiations and subsequent mutual agreement.

3. Protective and safety equipment is furnished by the City to all employees of both departments when required. The City of Portsmouth has provided and will continue to provide necessary safety and protective equipment.

ORDER

- A. This Board finds no unfair labor practice or violation of RSA 273-A:5 (h) as charged against the City of Portsmouth.
- B. The petition is hereby denied.



EDWARD J. HASELTINE, CHAIRMAN  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 27th day of September, 1979

Chairman Haseltine presiding. Members present and voting, Cummings, Moriarty, and Mayhew. Also present Board Clerk Evelyn C. LeBrun.